

1 Andre L. Verdun (SBN 265436)
2 **CROWLEY LAW GROUP**
3 401 West "A" Street, Ste. 925
4 San Diego, CA 92101
5 Tel. (619) 238-5700
6 Fax. (866) 786-6993
7 AndreVerdun@CrowleyLawGroup.com

8 Eric A. LaGuardia (SBN 272791)
9 **LAGUARDIA LAW**
10 3245 University Ave, #1
11 San Diego, CA 92104
12 Tel. (619) 655-4322
13 Fax. (619) 655-4344
14 eal@laguardialaw.com

15 Attorneys for Plaintiff,
16 Bridget Weintraub

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 BRIDGET WEINTRAUB, an individual,

20 Plaintiff,

21 vs.

22 LAW OFFICE OF PATENAUDE &
23 FELIX, A.P.C.; NATIONAL
24 COLLEGIATE TRUST; and DOES 1-
25 10,

26 Defendants.
27
28

Case No.: 3:13-cv-01032-W-RBB

**SECOND AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is an action for damages brought by an individual consumer
3 against Defendants for violations of the Fair Debt Collection Practices Act,
4 15 U.S.C. § 1692, *et seq.* ("FDCPA"); the California Rosenthal Act, Civil
5 Code § 1788 *et seq.* ("Rosenthal Act"), both of which prohibit debt
6 collectors from engaging in abusive, deceptive, and unfair practices.

7 2. Any violations by Defendants were knowing, willful, and intentional,
8 and Defendants did not maintain procedures reasonably adapted to avoid
9 any such violation.

10 **JURISDICTION AND VENUE**

11 3. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28
12 U.S.C. § 1337. Supplemental jurisdiction exists for the state law claims
13 pursuant to 28 U.S.C. § 1367.

14 4. Because Defendants do business within the State of California,
15 personal jurisdiction is established.

16 5. Venue is proper pursuant to 28 U.S.C. 1391.

17 **PARTIES**

18 6. Plaintiff, BRIDGET WEINTRAUB, formerly known as Bridget
19 Briedenbach, ("Plaintiff"), is a natural person residing in the State of
20 California.

21 7. Defendant LAW OFFICE OF PATENAUE & FELIX, A.P.C., ("P&F"),
22 is a company doing business collecting debts in California operating from
23 an address at 4545 Murphy Canyon Rd., 3rd FL, San Diego, California
24 92123.

25 8. On information and belief, Plaintiff alleges Defendant NATIONAL
26 COLLEGIATE TRUST, ("NCT"), is a Delaware business trust that holds the
27 alleged debt at issue herein and operates from an address located at 466
28 Lexington Ave., New York, NY10017-3140.

1 9. Defendant P&F is engaged in the collection of debts from consumers
2 using the mail and telephone and regularly attempt to collect consumer
3 debts alleged to be due to another.

4 10. Defendant P&F is a “debt collector” as defined by the FDCPA, 15
5 U.S.C. § 1692a(6).

6 11. Defendant P&F is a “debt collector” and Defendant NCT is a “creditor”
7 as defined by the Rosenthal Act, California Civil Code 1788.2(c).

8 12. Defendants are all entities or individuals who contributed to or
9 participated in, or authorized the acts or conspired with the named
10 Defendants to commit the acts and do the things complained of which
11 caused the injuries and damages to Plaintiff as set forth below. Each of the
12 parties, named and fictitious, acted as principal and agent, each of the
13 other, and combined and concurred each with the other in committing the
14 acts that injured the Plaintiff.

15 13. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C.
16 1692a(3).

17 14. Plaintiff is a “debtor” as defined by the Rosenthal Act, California Civil
18 Code 1788.2(h).

19 **FACTUAL ALLEGATIONS**

20 15. Sometime before January, 2013, Plaintiff is alleged to have incurred
21 certain financial obligations.

22 16. These financial obligations were primarily for personal, family or
23 household purposes and are therefore a “debt” as that term is defined by
24 15 U.S.C. §1692a(5).

25 17. The purported debt which Defendants attempted to collect from
26 Plaintiff was a “consumer debt” as defined by the Rosenthal Act, California
27 Civil Code 1788.2(f).

28 ///

1 18. Sometime before January, 2013, Plaintiff allegedly fell behind in the
2 payments allegedly owed on the alleged debt.

3 19. Subsequently, the alleged debt was assigned, placed, or otherwise
4 transferred, to Defendants for collection.

5 20. On or about January 23, 2013, Defendant P&F sent, and Plaintiff
6 received, a dunning letter addressed to Plaintiff's home and sent by and in
7 the name of Defendants.

8 21. This letter to Plaintiff, sent by Defendants, was a "communication" as
9 that term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that
10 term is defined by Cal. Civ. Code § 1788.2(b), and an "initial
11 communication" consistent with 15 U.S.C. § 1692g(a) and Cal. Civ. Code §
12 1812.700(b).

13 22. Defendants, debt collector as defined by, and pursuant to, Cal. Civ.
14 Code § 1788.2(c), failed to provide a notice to Plaintiff as prescribed in Cal.
15 Civ. Code § 1812.700(a) in a clear and conspicuous manner.
16 Consequently, pursuant to Cal. Civ. Code § 1812.702, this failure by
17 Defendants violated the California Rosenthal Fair Debt Collection Practices
18 Act, Cal. Civ. Code 1788 et seq.

19 23. On or about September 6, 2013, after approximately four years of
20 diligent attempts by Plaintiff, (several written requests as well as telephone
21 calls to Defendants and/or Defendants' affiliates or agents attempting to
22 collect the alleged debt), Defendants finally provided Plaintiff with a copy of
23 what Defendant alleged was the underlying contract for the debt
24 Defendants have been attempting to collect from Plaintiff.

25 24. The contract Defendants provided was executed in 2006 for a student
26 loan; does not appear to be related to the alleged debt Defendants have
27 been attempting to collect; and otherwise provides no basis in law or fact to
28 support Defendants claims that Plaintiff owes anything to Defendants.

1 25. In addition to failing to provide any valid underlying contract creating
2 the alleged debt upon which Defendants have been attempting collect,
3 Defendants have failed to provide, and to date continue to fail to provide,
4 any documentation of any chain of title to establish to Plaintiff that, even if
5 the underlying debt were validated with the contract offered, (which it is
6 not), that Defendants have any right to collect it.

7 26. By engaging in the above conduct, Defendant violated the language
8 in 15 U.S.C § 1692f(1) by attempting to collect an amount not authorized by
9 an agreement creating the debt or permitted by law.

10 27. By engaging in the above conduct, Defendant engaged in false,
11 deceptive, or misleading representation or means in connection with
12 attempting to collect an alleged debt in violation of 15 U.S.C. 1692e.

13 28. Because Defendant violated the language in 15 U.S.C. § 1692f(1)
14 and e, Defendant also violated Cal. Civ. Code § 1788.17 as it incorporates
15 15 U.S.C. § 1692f(1) and e.

16 29. Additionally, Plaintiff left school on or before 2007 and never made
17 any payment on the alleged debt Defendants seek to collect.

18 30. The statute of limitations for suing for breach of contract is four years
19 from the date of the breach, or in this case default, and the statute of
20 limitations would have run no later than some time in 2011 since Plaintiff
21 would have defaulted on or before 2007.

22 31. Defendants' letter dated, sent, and received by Plaintiff in January of
23 2013 threatening the possibility of a lawsuit against Plaintiff, is a threat to
24 take action that Defendants have no legal right to take in violation of both
25 the FDCPA and the Rosenthal Act.

26 32. Defendants' continued to make written statements that they intended
27 to consider suing Plaintiff, in violation of the FDCPA and Rosenthal Act for
28 threatening to take action they have no legal right to take.

1 33. The body of the January 23, 1013 letter states in part:

2 "In the event that legal action is pursued and judgment is
3 ultimately obtained against you, the judgment may include all court
4 costs, prejudgment interest and attorney's fees in addition to the
5 principal amount currently owed."

6 34. By including the above language, Defendants falsely represented that
7 the debt may be increased by the addition of attorney's fees, investigation
8 fees, service fees, finance charges, or other charges when, in fact, such
9 fees or charges could not legally be added to the existing obligation.
10 Consequently, Defendants violated Cal. Civ. Code § 1788.13(e).

11 35. By including the above language, P&F made a false representation
12 concerning the character, amount, or legal status of a debt. Consequently,
13 P&F violated 15 U.S.C. § 1692e(2)(A).

14 36. By including the above language, Defendant P&F threatened to take
15 action that cannot be legally taken or is not intended to be taken in violation
16 of 15 U.S.C. 1692e(5).

17 37. By including the above language, Defendant P&F engaged in false,
18 deceptive, or misleading representation or means in connection with
19 attempting to collect an alleged debt in violation of 15 U.S.C. 1692e.

20 38. Because Defendant P&F violated the language in 15 U.S.C. Section
21 1692e, P&F also violated Cal. Civ. Code Section 1788.17 because that
22 section incorporates 15 U.S.C. Section 1692e.

23 39. On December 5, 2013, after continuing to refuse to provide basic
24 documentation establishing that Plaintiff owes a debt to Defendants, let
25 alone the debt Defendants have been attempting to collect, and after
26 Defendants were advised that Defendants are time barred from bringing
27 any lawsuit against Plaintiff for the alleged debt, Defendants proceeded to
28

1 file a lawsuit in state court against Plaintiff for the alleged debt, well beyond
2 the statute of limitations.

3 40. Through the conduct stated above, P&F engaged in unfair or
4 unconscionable means to collect or attempt to collect a debt in violation of
5 15 U.S.C. Section 1692f.

6 41. Because Defendants violated the language in 15 U.S.C. § 1692f,
7 Defendants also violated Cal. Civ. Code § 1788.17 as it incorporates 15
8 U.S.C. § 1692f.

9 **ROSENTHAL WARNING**

10 42. The California Civil (CC) code section 1812.700 requires a disclosure
11 that must also be effectively communicated. CC 1812.700 states that
12 failures to effective provide this disclosure is a violation of CC 1788 et seq.

13 43. The required disclosure is:

14
15 The state Rosenthal Fair Debt Collection Practices
16 Act and the federal Fair Debt Collection Practices
17 Act require that, except under unusual
18 circumstances, collectors may not contact you
19 before 8 a.m. or after 9 p.m. They may not harass
20 you by using threats of violence or arrest or by
21 using obscene language. Collectors may not use
22 false or misleading statements or call you at work if
23 they know or have reason to know that you may not
24 receive personal calls at work. For the most part,
25 collectors may not tell another person, other than
26 your attorney or spouse, about your debt. Collectors
27 may contact another person to confirm your location
28 or enforce a judgment. For more information about
debt collection activities, you may contact the
Federal Trade Commission at 1-877-FTC-HELP or
www.ftc.gov.

44. This disclaimer is not effectively communicated when a debt collector
inconspicuously places the disclaimer where it is not readily visible.

///

1 45. Defendant buries this required language inconspicuously on the
 2 reserve side of their letter with no reference to the disclaimer on the front of
 3 the letter. Congress included the debt validation provisions in order to
 4 guarantee that consumers would receive adequate notice of their legal
 5 rights. See S.Rep. No. 382, 95th Cong., 1st Sess. 4, 8, reprinted in 1977
 6 U.S.Code Cong. & Admin.News 1695, 1699, 1702.

7 46. Placing the required Rosenthal warning on the back side of the letter
 8 without referencing the disclaimer on the front of the letter is tantamount to
 9 not providing the disclaimer at all.

10 47. Many cases found that placing the disclaimer on the reverse side of
 11 the dunning letter is not clear notice.

12 48. *Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222 (9th
 13 Cir. 1988) (notice is insufficient in both form and context when required text
 14 is placed in small print at the bottom of the page, dwarfed by the other text
 15 on the page); *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2d Cir. 1996) (notice
 16 printed on reverse did not comply with section 1692g); *Ost v. Collection*
 17 *Bureau, Inc.*, 493 F.Supp. 701 (D.N.D.1980) (notice printed on reverse did
 18 not comply with section 1692g); *Riveria v. MAB Collections, Inc.*, W.D.N.Y.
 19 1988, 682 F.Supp. 174 (Placement of required validation notice on reverse
 20 side of form collection letter, without any reference to the notice on the front
 21 of the letter, was insufficient to comply with Fair Debt Collection Practices
 22 Act; "When MAB "hid" the validation notice on the reverse side of its form it
 23 violated [the FDCPA]"; *cf.*, *Graziano v. Harrison*, D.N.J.1991, 763 F.Supp.
 24 1269, reversed in part, vacated in part 950 F.2d 107 (Placement of
 25 validation statement of debtor's rights and obligations on the reverse side
 26 of correspondence from debt collector does not render the notice of rights
 27 unclear when the front side of the letter stated "See reverse side for
 28 information regarding your legal rights!")

1 49. Other cases concerning the Truth and Lending Act clearly support the
2 position that if a “notice” is required, it cannot be so hidden as to preclude
3 all but the most persistent or lucky from finding it. See *Besaw v. General*
4 *Finance Corporation of Georgia*, 693 F.2d 1032, 1034 (11th Cir.1982);
5 *Basham v. Finance America Corp.*, 583 F.2d 918, 926 (7th Cir.1978)
6 (disclosures are to be made clearly and conspicuously); *Thomka v. A.Z.*
7 *Chevrolet, Inc.*, 619 F.2d 246, 249 (3d Cir.1980) (a consumer is not
8 informed in a clear and conspicuous manner if he needs to locate a
9 disclosure on a separate page); *Charles v. Krauss Co.*, 572 F.2d 544, 548
10 (5th Cir.1978) (the consumer should be able to look in one place for the
11 required disclosures; when more than one page is involved “the possible
12 concomitant of intentional concealment on the part of some unscrupulous”
13 parties occurs); *Gennuso v. Commercial Bank & Trust Co.*, 566 F.2d 437,
14 443 (3d Cir.1977) (disclosure of terms shall not be stated, utilized, or
15 placed so as to mislead or confuse consumers; placement of disclosures is
16 to be considered along with their statement and use).

17 50. ACA International, the Association of Credit and Collection
18 Professionals, is the comprehensive, knowledge-based resource for
19 success in the credit and collection industry¹. ACA International is the
20 largest association of debt collectors and debt buyers in the country, and
21 the industry leader in training and education in FDCPA and the California
22 Rosenthal Act compliance.

23 51. ACA International teaches in all of their manuals and training
24 programs that it is improper to place required notices on the back of debt
25 collection letters without clearly informing the consumer that the notice is
26 on the backside.

27 ///

28 _____
¹ <http://www.acainternational.org/about.aspx> (June 6, 2013)

52. Defendant intentionally attempted to overshadow and hide the Rosenthal consumer warning by placing the warning on the back of the debt collection notice, without providing notice that the disclaimer was on the backside of the letter.

53. Doing so, Defendant violated CC 1788 by failing to provide fair and adequate notice of the CC 1812.700 notice.

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

(Against P&F)

54. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

55. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

COUNT II

ROSENTHAL FAIR DEBT COLLECTIONS PRACTICES ACT

(ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

(Against All Defendants)

56. Plaintiff repeats, re-alleges, and incorporates by reference, all other Paragraphs.

1 57. The foregoing acts and omissions constitute numerous and multiple
2 violations of the Rosenthal Act, including but not limited to each and every
3 one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§
4 1788-1788.32.

5 58. As a result of each and every violation of the Rosenthal Act, Plaintiff
6 is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);
7 statutory damages for a knowing or willful violation in the amount up to
8 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable
9 attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from
10 Defendants.

11 **PRAYER FOR RELIEF**

12 59. WHEREFORE, Plaintiff prays that judgment be entered against
13 Defendants, and Plaintiff be awarded damages from Defendants, as
14 follows:

- 15 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 16 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C.
17 § 1692k(a)(2)(A);
- 18 • An award of costs of litigation and reasonable attorney's fees,
19 pursuant to 15 U.S.C. § 1692k(a)(3);
- 20 • An award of actual damages pursuant to Cal. Civ. Code §
21 1788.30(a);
- 22 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ.
23 Code
24 § 1788.30(b);
- 25 • An award of costs of litigation and reasonable attorney's fees,
26 pursuant to Cal. Civ. Code § 1788.30(c); and

27 ///

28 ///

- Any other relief that the court deems proper.

60. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 22, 2014

LAGUARDIA LAW

s/Eric A. LaGuardia
ERIC A. LAGUARDIA
and
ANDRE L. VERDUN
CROWLEY LAW GROUP
Attorneys for Plaintiff,
Bridget Weintraub

DEMAND FOR JURY TRIAL

Plaintiff does, by and through counsel of record, demand and is entitled to a trial by jury.

Dated: January 22, 2014

LAGUARDIA LAW

s/Eric A. LaGuardia
ERIC A. LAGUARDIA
and
ANDRE L. VERDUN
CROWLEY LAW GROUP
Attorneys for Plaintiff,
Bridget Weintraub